

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERIC BOONE,

Plaintiff,

v.

Case No. 21-cv-11366
Hon. Matthew F. Leitman

UNITED STATES DEPARTMENT
OF JUSTICE, *et al.*,

Defendants.

**ORDER (1) ADOPTING RECOMMENDED DISPOSITION OF REPORT
AND RECOMMENDATION (ECF No. 25) AND (2) GRANTING
DEFENDANTS' MOTION TO DISMISS (ECF No. 23)**

On May 28, 2021, Plaintiff Eric Boone filed this pro se civil action against the United States Department of Justice (“DOJ”), the Federal Bureau of Prisons (“BOP”), the Federal Correctional Institution of Milan, Michigan (“FCI Milan”), and a number of federal employees in their individual and official capacities. (*See* Am. Compl., ECF No. 2.) He alleges that the Defendants violated his rights under the Americans with Disabilities Act (“ADA”), the Affordable Care Act (“ACA”), the Administrative Procedures Act (“APA”), and the Fourth, Fifth, and Eighth Amendments of the U.S. Constitution. (*See id.*, PageID.10.) He also brings claims under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403

U.S. 388 (1971), against the individual named Defendants. The suit was referred to the assigned Magistrate Judge for all pretrial proceedings on September 29, 2021.

On April 6, 2022, Defendants filed a Motion to Dismiss or, in the Alternative, a Motion for Summary Judgment. (*See* Mot., ECF No. 23.) Defendants served the motion on Boone at the address he had provided to the Court. (*See id.*, PageID.140.¹) Boone did not respond to the motion.

The assigned Magistrate Judge entered a Report and Recommendation (the “R & R”) on February 28, 2023, in which he recommended that this Court grant Defendants’ motion and that Boone’s claims be dismissed. (*See* R & R, ECF No. 25.) The Magistrate Judge served the R & R on Boone at the service address he provided to the Court. (*See* Dkt. Entry for 2/28/23.) The R & R was later returned to the Court as undeliverable. (*See* ECF No. 26.)

At the conclusion of the R & R, the Magistrate Judge informed the parties that, if they wanted to seek review of his recommendation, they needed to file specific objections with the Court within fourteen days. (*See id.*, PageID.202.) Boone has not filed any objections to the R & R. The failure to object to an R & R releases the Court from its duty to independently review the matter. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985). Likewise, the failure to file objections to an R & R

¹ On March 24, 2022, Boone filed a notice of Change of Address, listing his new address as 800 West Wintergreen Avenue, Hutchins, Texas 75141. (*See* ECF No. 22.) Boone never provided another address to the Court.

waives any further right to appeal. *See Howard v. Sec’y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *Smith v. Detroit Fed’n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Finally, if and to the extent that Boone’s failure to object to the R & R is due to the fact that he did not receive it in the mail², Boone still would not be entitled to review of the R & R by this Court because any failure to receive the R & R was caused by Boone’s failure to update his address, as the Court had earlier advised him to do. (*See* ECF No. 5 – notifying Boone of his obligation to update his address.)

Accordingly, because Boone has failed to file any objections to the R & R, **IT IS HEREBY ORDERED** that the Magistrate Judge’s recommended disposition of Defendants’ motion is **ADOPTED**. Defendants’ Motion to Dismiss (ECF No. 23) is **GRANTED** and Boone’s Amended Complaint (ECF No. 2) is **DISMISSED**.

IT IS SO ORDERED.

s/Matthew F. Leitman

MATTHEW F. LEITMAN

UNITED STATES DISTRICT JUDGE

Dated: March 27, 2023

² While it may be tempting to assume that Boone’s failure to respond to the R & R was caused by the fact that he did not receive it in the mail, that assumption may be misguided here. As noted above, Boone did not respond to Defendants’ motion even though the motion was not returned to the Court as undeliverable. It may be that Boone has lost interest in pursuing this action.

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on March 27, 2023, by electronic means and/or ordinary mail.

s/Holly A. Ryan

Case Manager

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